

REMARKS

In the Office Action dated July 27, 2005, claims 18 and 19 were rejected under 35 U.S.C. § 112, ¶ 2; claims 1, 2 and 5-8 were rejected under § 102 over U.S. Patent No. 5,504,894 (Ferguson); claims 3 and 4 were rejected under § 103 over Ferguson; and claims 9-21 were rejected under § 103 over Ferguson in view of U.S. Patent Application Publication No. 2005/0091657 (Priem).

Claims 18 and 19 have been amended to depend from claim 17 rather than claim 16 to address the § 112 rejection.

It is respectfully submitted that Priem does not qualify as prior art against the present application. Note that the PCT filing date of Priem is January 23, 2003, which is *after* the filing date of the present application. Priem does claim priority to an EP application filed January 24, 2002. However, the foreign filing date of the EP application cannot be used as a 35 U.S.C. § 102(e) reference date. *See* M.P.E.P. § 2136.03 (8th ed., Rev. 3) (August 2005), at 2100-102 (stating that the filing dates of foreign applications that are claimed via 35 U.S.C. § 119(a)-(d), (f) or 365(a) may not be used as § 102(e) dates for prior art purposes). Therefore, withdrawal of the § 103 rejection of claims 9-21 over Ferguson and Priem is respectfully requested.

Amended claim 1 is allowable over Ferguson. Claim 1 recites a method of distributing workload in a workflow management system that comprises:

- during a calibration mode, executing plural instantiations of a test process to identify load index parameters;
- calculating a load index based on the load index parameters for each engine of the workflow management system, wherein each load index reflects a workload of its associated engine, wherein the load index corresponds to an average activity execution delay; and
- distributing workload across the plurality of engines in response to the load indices in a load sensitive mode.

Ferguson does not disclose the use of a calibration mode in which plural instantiations of a test process are executed to identify load index parameters. With respect to dependent claim 2, the Office Action had identified passages at column 10, lines 41-55; column 5, lines 54-56; and column 11, line 34-column 12, line 14, of Ferguson, as disclosing the execution of a test process. The cited column 10 passage refers to an estimation algorithm that precomputes T matrices to

approximate response time of a class transaction routed to a transaction server. However, there is no teaching in this passage of executing plural instantiations of a test process during a calibration mode to identify load index parameters that are used to calculate a load index for each engine of a workflow management system. The cited column 5 passage of Ferguson refers to a parameter N that tracks the number of class C_j transactions currently in the system. The cited passages in columns 11 and 12 of Ferguson refer to the estimation algorithm introduced in column 10 – however, these cited passages also do not disclose executing plural instantiations of a test process during a calibration mode to identify local index parameters.

Therefore, it is respectfully submitted that claim 1 is not anticipated by Ferguson.

Claims dependent from claim 1 are allowable for at least the same reasons.

Moreover, it is respectfully submitted that the obviousness rejections of dependent claims 3 and 4 have been overcome in view of the claim 1 amendment.

Newly added independent claim 23 (and its dependent claims 24 and 25) are also not anticipated by Ferguson, which fails to disclose at least a load balancer that is able to operate in a load insensitive workload distribution mode and in a load sensitive workload distribution mode.

In view of the foregoing, allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (10007861-1).

Respectfully submitted,

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